

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

ANDREW MAXWELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No.: 3:08-cv-254-RJC
	)	
KRISTINA MAXWELL,	)	
	)	
Respondent.	)	
	)	

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**ORDER RE VERIFIED PETITION FOR RETURN OF PETITIONER’S CHILDREN**

On June 5, 2008, Petitioner Andrew Maxwell, an Australian national, initiated this action against his wife Kristina Maxwell, an American citizen, seeking the return of his four minor children pursuant to the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601 et seq., the federal statute implementing the Hague Convention on the Civil Aspects of International Child Abduction, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 (Oct. 25, 1980). Specifically, Petitioner alleges that on February 6, 2008, Respondent wrongfully removed the couple’s four-year-old quadruplet children from their “habitual residence” in Australia to the United States, and has since wrongfully retained them in Charlotte, North Carolina.


On July 31, 2008, the Court conducted a full and final evidentiary hearing on the Petition, at which the parties submitted testimonial and documentary evidence.

Having considered the Petitioner’s Verified Petition, Application and supporting exhibits; the Respondent’s Answer, affidavit and supporting exhibits; the Petitioner’s Trial Brief; and the testimony and evidence admitted at the evidentiary hearing, the Court finds that the Petitioner has

failed to prove by a preponderance of the evidence that the couple's children have been wrongfully removed or retained within the meaning of the Convention. Hague Convention Art. 3(a); 42 U.S.C. § 11603(e)(1)(A). Specifically, the Court finds that the Petitioner has failed to establish either (2) that the couple's children were "habitual residents" of Australia immediately before the date Respondent removed them to the United States; or (2) even if the children were habitual residents of Australia, that the removal and retention was "wrongful," i.e., in breach of Andrew's custody rights under the law of Australia.

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Verified Petition seeking return of his minor children to their habitual residence in Australia (Doc. No. 1) **BE DENIED**. Pursuant to Federal Rule of Civil Procedure 52, a Memorandum setting forth the Court's findings of fact and conclusions of law will follow. **IT IS FURTHER ORDERED** that this Court's oral Injunctive Order, issued on June 18, 2008, **BE LIFTED**.

Signed: August 1, 2008

  
Robert J. Conrad, Jr.  
Chief United States District Judge 